

No. 9(1)82-PV-6Lab-9174.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award the Presiding Officer, Labour Court, Faridabad in respect of the Dispute between the workman and the management of M/s. Hindustan Machine Tools, Ltd., Pinjore (Ambala).

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER,
LABOUR COURT, HARYANA, FARIDABAD

Reference No. 8 of 1979.
(330—Fbd. of 1981)

Between

SHRI PARSHU RAM, WORKMAN AND THE RESPONDENT MANAGEMENT OF
M/S. HINDUSTAN MACHINE TOOLS LIMITED, PINJORE (AMBALA)

Shri Sagar Ram Gupta, for the workman.

Shri R.L. Gupta, for the respondent management.

AWARD

This reference No. 8 of 1979 (330-Fbd. of 1981) has been referred to the Labour Court, Rohtak, by the Hon'ble Governor of Haryana,—*vide* his order No. ID/Ymn/95—98/948, dated 6th January, 1979, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Parshu Ram, workman and the respondent management of M/s. Hindustan Machine Tools, Limited, Pinjore (Ambala). The term of the reference was :—

Whether the termination of services of Shri Parshu Ram was justified and in order? If not to what relief is he entitled?

Notices were issued to the parties by the Labour Court Rohtak after receiving this reference. The parties appeared and filed their pleadings. The case of the workman according to the demand notice and claim statement is that the workman was working with the respondent factory for the last 12 years. His work and conduct was always quite satisfactory and drawing Rs. 588.50 P. at the time of termination. He was terminated on 1st March, 1979 illegally and malafidely. The workman explained the charges levelled against him but he was denied a full and effective opportunity to defend himself. No proper and legal enquiry was held. The provisions of standing order and principles of natural justice was violated freely in holding the enquiry. The enquiry held by the employer was mere formality and the workman reserve his right to make detailed submission about the enquiry. The employer has victimised the workman for extraneous reason, and the punishment given to the workman is disproportionate to the charges. So the workman is entitled for his reinstatement with full back wages and continuity of service.

The case of the respondent according to the written statement is that the workman was chargesheeted on 16th March, 1976 for forging the signatures of the officer for producing identical demand notes in order to obtain duplicate supplies from the stores department. One of such demand notes was intercepted at the gate on 12th March, 1976 and the workman confessed his guilt which is in his own handwriting. The respondent has also requested for the approval of the action of the management under section 33-(2)(b) of the Industrial Disputes Act. The confessional statement of Shri Parshu Ram which was filed in original with that application. But the workman make a statement before the Industrial Tribunal that he did not want to proceed with the application so it was dismissed. Shri N. D. Puri was appointed as enquiry officer who granted full opportunity to the workman copies of the proceedings were supplied to him and the workmen signed the proceedings of the enquiry in token of his presence. The whole enquiry was conducted in the presence of his observer but when he refused opportunity was given for the appointment of another observer. Shri Umed Singh was appointed as his second observer, but he insisted that he will participate in the enquiry if it is started from the very beginning. The enquiry officer offered opportunity to go through the previous statement, but he refused to participate in the enquiry. A number of adjournments were granted to enable the workman to appoint another observer, but he failed and the proceedings were continued and the workman cross examined himself. The witnesses which were produced during the course of enquiry. The enquiry was conducted in Hindi. Full and fair opportunity was given in the enquiry and the findings of the enquiry officer were according to law. The workman has stated in his claim statement that he was victimised but no reason of victimisation has given in the claim statement and he was victimized for any reason. The workman was found guilty of the charges levelled against him and the punishment given is on the low side. The criminal case was also registered against the workman for which the police is investigating the case. His previous record was also considered while passing to the order. So the workman is not entitled for any relief.

On the pleadings of the parties, the following issues were framed:—

1. Whether the domestic enquiry conducted by the management is fair and proper in keeping with principles of natural justice and finding of the enquiry officer was not perverse and not vitiated ?
2. Whether the confessional statement allegedly made by the workman on 12th March, 1976 was voluntary and not under pressure ?
3. As per reference ?

Issue No. 1 was ordered to be treated as preliminary issue. This file was transferred to me by the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh,—*vide* order No. 1 (79)-80-1Lab., dated 20th October, 1981.

My findings on the issues are as under :—

Issue No. 1.—The representative of the respondent argued on this issue that the workman was dismissed from service on 1st March, 1978 after a fair and proper enquiry and the workman raised the demand notice against this dismissal after more than seven months from this dismissal order stating therein that the termination of services is illegal and unjustified. The workman filed his claim statement in this court asserted the following points. That the workman deprived of full opportunity. No proper and legal enquiry was held in the enquiry. The enquiry held was mere formality. The above statement in the claim statement shows that the workman was with holding to point out any specific defect in the enquiry, although the complete record of the enquiry was already produced before the Tribunal in the matter of approval application of which a notice was given to the workman but after going through the petition the workman did not like to contest the application on the ground that he was not an effective workman, so no approval, was necessary. The workman has full knowledge of the enquiry proceedings placed on the record of the Industrial Tribunal. It is a settled law that general pleadings cannot be a substitute of specific pleadings so as to enable the opposite party to meet with them especially when the onus is placed on the opposite party. The workman should have in the statement of claims pointed out any irregularity against which he has the grievance, which he has failed even in the rejoinder. The workman has simply stated that para No. 1 to 4 are not admitted without clearing any specific allegation in the enquiry. The management has been kept in dark as to what objection are to make. The management produced Shri N.D. Puri in the enquiry. The same were not denied by the workman at any stage. The purpose was that the workman may be able to put any question to Enquiry Officer to show if the enquiry was vitiated conducted by him. The proper charge sheet was given to the workman for which the workman reply which is Ex., M-3 which was found un-satisfactory and Shri N.D. Puri was appointed as enquiry officer to enquire the charges in the chargesheet Ex. M-1 as stated by Shri N.D. Puri as MW-1. He has stated in his statement that he conducted the enquiry which is Ex. M-2 consisting of 69 pages. The enquiry proceedings were started from 11th May, 1976 and finished on 2nd May, 1977. The workman was given full opportunity in the enquiry proceedings as desired by the workman. Shri Balwant Singh was appointed an observer and when he refused to participate in the enquiry then Shri Umed Singh was allowed but he wanted to re-start the enquiry and after the refusal he walked out from the proceedings. The workman cross examined all the witness of the respondent and took full opportunity in the enquiry proceedings. The charges against the workman were that he was looking after the stock in the store department in the Machine tools Division. On 12th March, 1976 when he was on duty demand notes belonging to the group were notices to have been copies out from the identical demand notes including initials and signatures of the concerned authorised officer in order to draw material from the stores in order to derive personal gains fraudulently and deceptively. When demand note was recovered from in possession by Shri O.P. Sharma ASO-II while interrogating him on the subject which was torn out by him in his presence. On the same day the ledger of group-6 was physically checked and 12 items were found short in the quantity. The respondent produced 11 witnesses in the enquiry which were Shri J.P. Malik, Manager progress, Shri D.P.S. Verma, Store Officer(M), Shri Krishan Lal, the then foreman, Shri O.P. Sharma, ASYO-II, Shri A.C. Nagrath, Foreman R & M, Shri K.N. Bhatia foreman R & M, Shri V.K. Nair, Supervisor R. & M, Shri Kuldeep Singh, Foreman, Electrical, Kharati Lal, Supervisor; Shri Babu Ram, Oilman Foundry Shri Bhim Singh, Electrician (R. & M.). All the witness supported the pleas of the respondent and the workman could not rebut the allegation theft so the findings of the enquiry was proper which is Ex. M-3 and after this the respondent passed Ex.-M-4 to dismiss the employee. The representative of the respondent argued that even before this Hon'ble Court the workman and his representative cannot make out his case by any way. The enquiry took more than one year which shows that ample opportunities was provided to the workman full chance to defend his case. He further argued that the workman has alleged nothing in the claim statement or his statement as WW-1 against the enquiry officer or no allegation placed in his statement rather he has stated in his statement that he has no personal enmity with any officer of the company. The workman has alleged that he has victimized but no cause or reason has been given in his statement and written statement as WW-1 and then what was the cause of his victimization. The workman has not even proved before this court what he has alleged in the claim statement because the allegations itself are not clear. Then how it can not be provided on the file. So the enquiry office gave the full opportunity to the workman and met out all the objection in the enquiry proceedings. when there is no objection or allegation against the enquiry officer in the enquiry proceedings of before this court so the enquiry be held un-fair. The enquiry was constituted fairly with full opportunity was given to the workman.

The representative of the workman argued on this issue that as stated in his statement as WW-1 he was working in the respondent factory from 16th April, 1964. He received the first charge sheet in his tenure Ex. M-1 and submitted the explanation,—vide Ex. M-2 after this reply, he received a letter appointing Shri N.D. Puri as Enquiry Officer. After this letter he sent a letter Ex. W-1/ to W-1/5 and Ex. W-6 to W-24 to the respondent. He further argued that as stated by the workman in his statement that no record was given to the workman before starting the enquiry and the workman was not allowed to have a assistance in the enquiry proceedings. The observer which was assisting in the enquiry was threatened by the employer so he refused to participate in the enquiry then the enquiry was conducted without any observer or helper. He appointed another observer who asked certain documents and information during the enquiry but the enquiry officer did not permit and on that he walked out from the enquiry. The workman was not supplied with the copy of the findings of the enquiry officer. No list of witnesses or document was given to the workman. The enquiry officer used to record the statement of the respondent according to his own way and no proper enquiry was held by the enquiry officer. So the enquiry be vitiated.

After hearing the arguments of both the parties, and going through the file, I am of the view that the workman has failed to point out any allegation against the enquiry officer or about the enquiry which could be the ground to vitiate the enquiry. The workman was given a full opportunity and he participated in the enquiry through out. The enquiry took more than one year and not a small time which can be doubted. The workman was allowed two observer to assist him but when the workman failed to bring any observer to assist him then it was not the fault of the respondent or the enquiry officer. The workman has fully cross examined the respondent witnesses and cannot able to break their integrity. It is fully proved in the enquiry that he forged the signature of demand notes. The workman has not specifically denied the admission before Shri O.P. Sharma of his charges. When the respondent has specifically stated in the statement that the workman gave his statement before Shri Sharma, Security Officer who investigated the matter. It was the duty of the workman to deny the fact and to prove it that it was not in his hand. When the workman admitted one fact before the officer who has no enmity with the workman as he has stated in his cross examination that the admission is genuine. If these admissions was not genuine then he prove regarding these documents and he has stated in his rejoinder nothing about these specific documents with the respondent has mentioned in the written statement. It shows that the workman was guilty of the charges and has nothing to prove in the enquiry and the enquiry was fair and proper. So this issue is decided in favour of the respondent against the workman.

Issue No. 2 & 3.—After deciding issue No. 1 in favour of the respondent there is no need to discuss issue No. 2 in details and in the enquiry the workman was found guilty of the charges and on those charges he was dismissed from service. The order of dismissal is justified because no employer can keep an employee who prepare such forged note to take articles from the stores for his personal gains. In these circumstances the workman is not entitled for any relief.

This be read in answer to this reference.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endst. No. 1943, dated 1st September, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)82-PV-6Lab/9169.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the Dispute between the workman and the management of M/s. Laxmi Theatre, Yamuna Nagar.

IN THE COURT OF SHRI HARI SINGH KAUSHIK PRESIDING OFFICER, LABOUR COURT

HARYANA, FARIDABAD

**Reference No. 62 of 1978
(315-Fbd. of 1981)**

Between

SHRI KALU RAM, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S. LAXMI THEATRE, YAMUNA NAGAR.

Shri Balbir Singh for the workman.

• Shri W.C. Sharma, for the respondent management.

AWARD

This reference No. 62 of 1978(315-Fbd. of 1981) has been referred to the Labour Court Rohtak by the Hon'ble Governor of Haryana,—*vide* his order No. ID/Amb/27-B-78/17213, dated 4th May, 1978 under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Kalu Ram, workman and the respondent management of M/s Laxmi Theatre, Yamuna Nagar. The term of the reference was :—

Whether the termination of services of Shri Kalu Ram was justified and in order ? If not, to what relief is he entitled ?

The Labour Court, Rohtak issued the notices to the parties on receiving this reference order ? The parties appeared and filed their pleadings. The case of the workman according to his demand notice and claim statement is that the workman was working with the respondent in publicity department and was drawing Rs. 238 per month and his services were illegally terminated without any reason on 11th October, 1977. The workman was working with the respondent for the last 15 years regularly in the same department. The workman was not paid any legal dues at the time of termination. So the claimant is entitled for his re-instatement with continuity of service and with full back wages.

The case of the respondent according to the written statement is that the workman was never employed as a workman with the respondent, and there is no relation of master and servant between the parties. So the reference deserve rejection on this ground only. The workman was working with the respondent as independent contractor for out door publicity in accordance with the prevailing practice in the cinema industry and his services were not terminated on 11th October, 1977 but the workman himself terminated the contract with the respondent a long time back. The respondent was not given the opportunity before the conciliation officer to put their case and the conciliation officer sent the *ex parte* report to the Government. So the reference may be rejected.

On the pleadings of the parties, the following issues were framed :—

1. Whether the workman was an employee of the respondent ?
2. If issue No. 1 is proved whether the termination of services of the workman is proper, justified and in order ? If not to what relief is he entitled ?

The case was transferred to me after recording two witnesses of the workman and one witness of the respondent,—*vide* Secretary to Govt., Haryana, Labour & Employment Department, Haryana, Chandigarh order No. 1(79)80-1 Lab, dated, 20th October, 1981. The respondent produced two witnesses before me and my findings on the issues is as under :—

Issue No. 1 :—The representative of the respondent argued that as stated by the respondent witness MW-3 Shri Mulkh Raj, Manager of the respondent that the claimant was a publicity contractor with the respondent and used to get charges according to his work and left his work as per term and conditions of contract. The workman left his contract,—*vide* Ex. M-1 as he did not want to work as contractor with the respondent and took his full and final,—*vide* Ex. M-2. The voucher of payment Ex. M-1 was written by Shri Tarsem Lal who has appeared as MW-2 Shri Tarsem Lal has stated in his statement that he knows the claimants. He came to him for writing this Ex. M-1 and he wrote Ex. M-1 and signed the same. The workman marked his thumb impression in his presence. The representative of the respondent argued that as stated by the manager of the respondent that the workman was not working as employee of the respondent but he was contractor and he was paid according to his bill submitted by him. So he was not an employee of the respondent. The representative of the workman argued on this issue that as stated by the workman in his statement he was working in the respondent concerned from the last 15 years and the respondent used to give him monthly wages and he was an employee of the respondent and not a contractor. The respondent used to pay the salary on the vouchers and not on the register as paid to other workers of the cinema. The respondent also paid the wages to other employees of the publicity Department on the vouchers. He further argued that the statement of the workman was corroborated by Shri Bal Sarup Ex-Sweeper of the cinema as WW-1 who has stated that the workman was working with the respondent before his appointment and he used to receive the pay from the manager with them and he was the employee of the respondent. He further stated in his cross examination that the wages were paid to the other three workmen working with the claimant by the manager and he was not the contractor of the respondent.

After hearing the arguments of both the parties and going through the file I am of the view that the respondent has failed to prove that the workman was not employee of the respondent management because the respondent did not produce any contract in the court for his terms and condition of his contract. They also failed to bring the vouchers of the wages paid to this workman. The representative of the respondent as suggested on witness No. 1 and 2 of the workman that the claimant used to get wages from the distributor of the film and not from the management. If the workman used to get the wages from the distributor it was the duty of the respondent to prove this fact that the workman used to get the wages from the distributor and not from the respondent concerned. The respondent has also failed to put Ex. M-1 before the workman at the time of his statement. The document produced in the court after four years proceedings in the case. They have not taken

this plea in the written statement that he left the contract. If this document was present with the respondent they should have submit document with W.S. and ask the workman about its genuiness. When the document was not put to the workman then it can not be said a genuine document. and it is not proved on the file that he was a contractor by any way. So the workman is employee of the respondent and not a contractor. So this issue is decided in favour of the workman and against the respondent.

Issue No. 2 :—The representative of the respondent argued on this issue that the workman left his contract,—*vide* Ex. M-1 and took his full and final after the termination of this contract. So he was not terminated by the respondent but he left his contract of his own.

The representative of the workman argued on this issue that the respondent has failed to produce the bills of contract which they have paid to the workman during the last 15 years. If he was on contract basis the respondent should have produce the bill of payment to the workman and the contract deed if any between the parties. When there is no contract deed and bill produced in the court it is clear that the workman employed with the respondent for the last 15 years and they have terminated his services without any reason or notice. The workman is paid only Rs. 238 on 7th October, 1977 as is full and final. When he was not an employee of the respondent why they have paid the full and final to the workman. If they have paid the full and final they should have paid retrenchment compensation under section 25-F of the Industrial Disputes Act which is not paid to the workman so the termination is illegal.

After hearing the arguments of both the parties and going through the file I am of the view that the respondent has failed to prove this case even after so many years. After closing the evidence of the workman the case was fixed for the evidence of the respondent on 12th February, 1979 and the respondent closed his case on 8th April, 1982 and could not prove by any documents or oral witnesses that the workman was not their employee and worked as contractor which plea they took in their statement. The evidence given by the workman with his co-workman cannot be dis-believed. and the workman was terminated without any legal procedure. So the workman is entitled for his reinstatement with continuity of service and with half back wages.

This be read in answer to this reference.

HARI SINGH KAUSHIK,

Dated : The 19th August, 1982

Presiding Officer,
Labour Court, Haryana.,
Faridabad.

Endst. No. 1938, Dated the 1st September, 1982

Forwarded(four copies) to the Commissioner & Secretary to Government Haryana, Labour & Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)82-PV-6Lab/9170.—In pursuance of the provisions of section 17 of the Industrial Dispute Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s Ambala Central Co-operative Consumer Store Ltd. (Super Bazar), AmWala Cantt.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT
HARYANA, FARIDABAD

Reference No. 176 of 1979 (324—Pbd. of 1981)

between

SHRI JASPAL SINGH, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S AMBALA CENTRAL CO-OPERATIVE CONSUMERS STORE LIMITED) SUPER BAZAR), AMBALA CANTT.

Shri Janak Raj Sharma, along with workman.

Shri D.R. Batra, for the respondent management.

AWARD

This reference No. 176 of 1979 (324-Fbd of 1981) has been referred to the Labour Court, Rohtak by the Hon'ble Governor of Haryana,—*vide* his order No. ID/Amb/76-79/41002, dated 18th September, 1979, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Jaspal Singh, workman and the respondent management of M/s Ambala Central Co-operative Consumers Stores Limited (Super Bazar) Ambala Cantt. The terms of the reference was :—

Whether the termination of services of Shri Jaspal Singh was justified and in order ? If not, to what relief is he entitled ?

The Labour Court, Rohtak issued the notice to the parties on receiving this reference order. The parties appeared and filed their pleadings. The case of the workman according to his demand notice and claim statement is that he joined the service of the respondent in December, 1977 as Sales man as permanent employee and was getting Rs. 250/- per month. The respondent terminated his services on 27th December, 1978 without any cause or reason. So the workman is entitled for his reinstatement with full back wages and continuity of service.

The case of the respondent according to the written statement is that the claimant defrauded the store by embezzling thousands of rupees and as a result of an arbitration case was made against him and F.I.R. lodged against the workman. The workman was terminated due to his absence, dishonesty and embezzlement of store money. So he was rightly terminated from the service and there is justification in the termination. On the pleadings of the parties only one issue as per reference was framed :—

Whether the termination of service of the workman was proper, justified and in order ? If not, to what relief is he entitled ?

The case was transferred to me by the Secretary to Government, Haryana, Labour & Employment Department, Chandigarh,—*vide* his order No. 1(79)-80-1 Lab, dated 20th October, 1981 at the stage of evidence of both the parties. The evidence of both the parties were recorded by me and my finding on the issue is as under :—

Issue No. 1.—The representative of the respondent argued on this issue that the workman joined the respondent concerned as Sales man in December, 1977 and started absenting from his duty from 30th April, 1978. He came on duty on 10th May, 1978 and after that he absented himself from 3rd July, 1978 without any information and application to the office for his absence. It was reported that there is some shortage in the store which was in the charge of the claimant physical verification was made on 30th June, 1978 and in the verification there was shortage of Rs. 11,428. The workman as stated by Shri Raghbir Singh, Manager as MW-1 was given the letter for explanation. By the order of the General Manager the Branch of Baldev Nagar was closed on 4th August, 1978 *vide* Ex. M-1 as the claimant was absent from duty since long and letter was sent to the Police Inspector Co-operative Cell. Ex. M-3 in which the General Manager asked the Police Inspector to take the charge of the shop as the shop was locked and the keys were with the claimant and he is absenting from the duty after embezzlement of store money. The General Manager sent a letter to the workman which is Ex. M-4 about the shortage in the store on the physical verification of Rs. 11,428/- and asked to deposit this amount with the Co-operative store (Super Bazar) within a week. The letter is dated 18th August, 1978. After this letter the charge-sheet Ex. M-5 was issued to the workman which the workman has admitted in cross-examination. In the charge-sheet the charges were that the workman was absenting from duty since 3rd July, 1978 without any application for any leave. He was also absent from the duty from 30th April, 1978 to 10th May, 1978 without getting prior sanction leave in any way and this act of workman was wilful absence from duty and the third charge was for the embezzlement of Rs. 11,428/- which was found on the physical verification of the store on 30th April, 1978. The workman has also admitted this fact that the physical verification was made and there was shortage of amount in his cross-examination. The General Manager made the order Ex. W-6 that as the Branch Sales Man Shri Jaspal Singh, has failed to hand over the charge and direction by him and he has also absconding from duty for long. So on account of long absence the services of Shri Jaspal Singh workman working as sales man are hereby terminated. The services of the claimant was terminated due to long absence from duty and embezzlement of store money. Both the facts are admitted by the workman as WW-1. The amount recoverable from the workman in Ex. M-7 which is a result of physical verification. The registered letter was sent to the workman which is Ex. M-8 which also admitted by the workman as receipt in which it is written that 15 days time was given to the workman but he failed to deposit the amount. He is further given 7 days time to deposit the same otherwise the police case will be registered against the workman and when the workman failed to reply the letters and failed to deposit the embezzlement amount the case was registered against him,—*vide* letter Ex. M-9 so the termination of service of the workman was justified in these circumstances, and also case of the respondent is admitted by the workman who has come in the witness box as WW-1. He further argued that the workman has concealed all the facts in his statement as WW-1 and also in the demand notice and claim statement so such type of persons cannot be believed by this court. The workman has stated in his cross-examination that he received the charge-sheet and replied the same. He has further admitted that he has to give the embezzled amount which prove the charges against the workman and termination is justified.

The representative of the workman argued on this issue that the workman was terminated as he has stated in his statement which is WW-1 without giving any notice and charge-sheet and there was no enquiry against the workman in respect of the embezzlement. The workman was a permanent employee and his services cannot be terminated in this way. The management has terminated. So the termination is not justified.

After hearing the arguments of both the parties, and going through the file, I am of the view that the respondent has fully proved the case for termination. The workman in his cross-examination as WW-1 has admitted the case of the respondent and after admission the embezzlement of Rs. 11,428.12 P. and after admission he received the letter from the respondent it is clear that the workman absconding himself from duty due to this embezzlement and the case was referred to the Police and the workman also admitted in his cross-examination that there was a case of arbitration against him so it is clear that the workman was terminated after a thorough opportunity given to the workman and the person like this workman cannot work at such responsible posts where the goods worth come in his charge and he embezzled the money of the store which shows that he was a dishonest person and dishonest person cannot be retained in such employment. So the respondent are justified in terminating the services of the claimant and proved their case of long absence and embezzlement. So this issue is decided in favour of the respondent and against the workman and the workman is not entitled for any relief.

This be read in answer to this reference.

Dated the 19th August, 1982.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 1939, dated 1st September, 1982.

Forwarded four copies to the Commissioner & Secretary to Government, Haryana; Labour & Employment Department, Chandigarh as required under section 15 of the I. D. Act.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

The 17th September, 1982

No. 9(1)82-6Lab/8826.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s Boor Singh Company, Alexandra Road, Ambala Cantt.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD

Reference No. 192/1979

(329 Fbd. of 1981)

between

SHRI RAJINDER KUMAR WORKMAN AND THE RESPONDENT-MANAGEMENT OF
M/S BOOR SINGH AND COMPANY ALEXANDRA ROAD, AMBALA CANTT

Present:

Shri Balbir Singh Saini, along with workman,
None, for the respondent-management.

AWARD

This reference No. 192 of 1979 (329 Fbd. of 1981) has been referred to the Labour Court, Rohtak by the Hon'ble Governor of Haryana,—*vide* his order No. ID/Amb/131-79/43338, dated 9th October, 1979 under section 10 (i)(c) of the Industrial Disputes Act, 1947, existing between Shri Rajinder Kumar, workman and the respondent management of M/s Boor Singh and Company Alexandra Road, Ambala Cantt. The terms of the reference was.—

Whether the termination of services of Shri Rajinder Singh was justified and in order? If not, to what relief is he entitled?

The Labour Court, Rohtak issued the notice to the parties on receiving his reference order. The parties appeared and filed their pleadings. The case of the workman according to the demand notice and claim statement is that he joined as Mechanical General helper on 1st April, 1975 and performing his duty diligently. On 26th April, 1979 Shri Balbir Singh, Manager of the respondent called and asked the workmen to leave the factory without any written orders. The workman raised the demand notice on 26th April, 1979 and on that demand notice he received a letter on 28th April, 1979 from the manager stating therein to report for duty immediately, but when he went to join his duties he was not allowed to join. The respondent illegally terminated the services of the workman and without any reason. He is entitled for his reinstatement with continuity of service and full back wages.

The case of the respondent according to written statement is that the reference is bad in law because his the claim is still in the employment of the respondent and he joined the service on 4th April, 1979. On account of his continuous absence from 26th April, 1979 onwards he was treated as badli workman,—vide letter dated 7th May, 1979 and since then he continued to be Badli workman but he did not report for duty. There is no case of termination of service of the workman and it does not attract the provisions of the Industrial Disputes Act. So the reference be rejected. On the pleadings of the parties following issues were framed:—

1. Whether the reference is bad in law for the reasons given in the legal objection of the written statement.
2. Whether the workman concerned is a Badli workman still in the service of the respondent.
3. Whether the written statement can not be treated as part of the pleadings for lack of verification?
4. As per reference.

Issue No. 1 to 3 were ordered to be treated as preliminary issue. After recording the evidence of both the parties, my predecessor decided the issue No. 1 to 3 as under:—

Issue No. 1 to 3:—

By this order I decide issue from 1 to 3 framed on the basis of the pleas of the parties in reference No. 192 of 1979 between Shri Rajinder Kumar and the management of M/s Boor Singh and company Ambala Cantt. The management examined Shri Balbir Singh, Manager as MW-1 and closed their case on issue No. 1 to 3 which are as under:—

1. Whether the reference is bad in law for the reasons given in the legal objection of the written statement.
2. Whether the workman concerned is badli workman still in the service of the respondent.
3. Whether the written statement cannot be treated as part of the pleadings for lack of verification?

The case of the management is that the workman continued remaining absent from 26th April, 1979 onwards and he was treated as badli workman,—vide letter, dated 7th May, 1979 and he is still continuing to be badly workman but is not reporting on duty. The management did not terminate the services of the workman and as such the case of the workman does not fall under section 2 (a) read with section 10 (i) of the Industrial Disputes Act and as such the reference is bad in law. The management relied on documents contained in the list of reliances at page 13 of the file. The length of service and the designation as General Helper alleged by the workman are not disputed by the management.

The workman on the other hand has alleged that the management annoyed by his trade union activities was in search of ways and means to get rid of him and on 26th April, 1979 Shri Balbir Singh, Manager of the respondent at about 2.30 P.m. asked the workman to leave the factory as there was no work for him. Further stated that his services have been terminated on 26th April, 1979, the workman served a demand notice on the management. The workman again reported for duty on 28th April, 1979 after receipt of a letter from the Manager but the manager did not allow him to enter the place of work. The talks for reinstatement continued and the demand notice was filed on 2nd June, 1979 without taking any action. Another demand notice dated 18th June, 1979 was served resulting in the present reference.

The correspondent taken place between the union and the management shows that the management wanted and has attempted to prove the workman absent from his duties without any rhyme or reason. The management has not produced any reliable evidence to establish the refusal of the workman to carry on the job and help his senior. It seems to be a false and frivolous charge made out against the workman treating the workman absent from duty is unfounded thereby resulting in the conversion of the workman from a regular general helper to a badli workman is also without any reasonable cause nor it is a terms and conditions of his service as no contract of such nature binding the parties has been brought to my notice. Rather the management witness has stated that no terms are settled at the time of appointment of the worker. In fact the workman was terminated on 26th April, 1979 and the dispute leading to the present reference arose the same day and the reference made by the Government for adjudication of the same is valid one. No enquiry has been held by the management. The changing of service condition of the workman without a forced him reasonable opportunity is against the rules of natural justice and the treating of the workman as Badli workman is un-warranted. From the discussion made above the workman is a regular general helper and not a badli workman and he is also not in the service of the management. His services being terminated on 26th April, 1979. As regards issue No. 3 the same was neither pressed nor any mention was made during the course of arguments. Issue No. 1 and 2 are decided against the management while issue No. 3 is decided against the workman. Ordered accordingly.

And announced the order on 20th October, 1981 before the parties and the case was fixed for the evidence of the parties on issue No. 4. This case was transferred to me from the Labour Court, Rohtak, —*vide* Secretary to Government Haryana Labour and Employment Department order No. 1 (79)80-1 Lab, dated 20th October, 1981 and I issued two registered notices to the parties. The workman came present but the respondent did not come in the court even after receiving the notice of the court. I proceeded *ex parte* against the respondent on 7th April, 1982 and recorded the evidence of the workman on the issue.

My findings on issue No. 4 is as under :—

Issue No. 4 :—

After deciding issue No. 1 and 2 in favour of the workman by my predecessor and after hearing the orders the respondent choose not to appear in the court as they have to say nothing in respect of this issue. The workman as stated that he joined the services on 4th September, 1975 and terminated on 26th April, 1979 without any reason or cause. He was simply called by Shri Balbir Singh, Manager of the respondent and verbally asked to leave the factory. He was permanent employee of the factory and cannot be terminated in the way they have terminated. The respondent has taken the pleas to change the workman's status as Badli workman which was rejected by my predecessor. It shows he was a permanent workman and his status cannot be changed by the management in this way they have done. So the workman was terminated without any reason and the respondent are not justified in terminating the services of the workman in this way. So the workman is entitled for his reinstatement with full back wages and continuity of service.

This be read in answer to this reference.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endst. No. 1888, dated the 24th August, 1982.

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

M. KUTTAPPAN,

for Commissioner & Secretary to Government, Haryana,
Labour & Employment Department.